California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

August 5, 2009

Travis Hopkins
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE TALBERT LAKE DIVERSION PROJECT, CITY OF HUNTINGTON BEACH, ORANGE COUNTY (ACOE REFERENCE NO. SPL – 2007 – 00368 – YJC)

Dear Mr. Hopkins:

On December 31, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Bonterra Consulting, for the construction of a diversion structure in the East Garden Grove-Wintersburg Channel. This structure will divert dry-weather flows into proposed constructed wetlands and then into Talbert Lake, located in Central Park, City of Huntington Beach, Orange County. Your original application materials describe several design concepts for the diversion structure but do not specify which will be constructed. Regional Board staff subsequently prepared a generic draft Certification to accommodate any of the proposed designs. However, during the review of the draft Certification, your agent specified the chosen design, described below, in an electronic message received on April 29, 2009.

This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:

The project is construction of a diversion structure in the East Garden Grove-Wintersburg Channel, between Goldenwest Street and Gothard Street. The diversion structure will consist of an inflatable rubber dam, or similar structure. The structure will result in the retention of a pool of water on its upstream side so that dry-weather channel flows can be pumped out of the Channel. The structure will also prevent marine-influenced, brackish water in the channel below the diversion structure from commingling with dry-weather flows during high tides. Trash, debris, and other pollutants may settle to the bottom of the upstream pool. A maintenance program will address the removal of these pollutants. The rubber dam will be located approximately 1,160 feet upstream of Goldenwest Street bridge. The dam will be constructed in a manner such that only freshwater, dry-weather runoff will

be diverted from the Channel and conveyed into a series of proposed constructed wetlands in Central Park. The constructed wetlands will be designed to remove pollutants prior to discharging the water into Talbert Lake, also located in Central Park.

In a subsequent phase of a larger Talbert Lake improvement project, the lake will be excavated to accommodate the introduced water while maintaining the Lake's flood control function. The proposed hydrologic condition will result in habitat type changes shown in Table 1 below. Water levels in Talbert Lake are subject to fluctuations depending on the amount of annual rainfall and changes in the underlying groundwater elevations. The introduced water will help stabilize lake levels, however, lake levels will be managed in order to maintain the Lake's flood storage capacity and preclude diverted flows from discharging from the Lake. Diverted flows will be evaporated from the Lake, infiltrated into the groundwater, or used to irrigate landscaping within the Park. The constructed wetlands will be subject to maintenance, including periodic harvesting and disposal of vegetation, and excavation of accumulated sediment. The project is located within Section 26 of Township 5 South, Range 11 West, of the U.S. Geological Survey Seal Beach, California, 7.5-minute topographic quadrangle map (33.7064 degrees N/ -118.0034 degrees W).

Table 1: Existing and Proposed Vegetation Types

Vegetation Type	Existing (acres)	Proposed (acres)
Freshwater marsh	0.28	5.78
Mulefat scrub	0.01	0
Open water	9.34	9.61
Ornamental landscaping	9.74	6.39
Turfgrass (with scattered ornamental vegetation)	5.41	2.88
Willow riparian scrub	7.90	7.96

Receiving water: East Garden Grove-Wintersburg Channel and Talbert Lake.

Fill area: 18.36 acres of permanent impact, and 0.74 acre of impact to Talbert Lake; up to 0.13 acre of permanent impact to the East Garden Grove-Wintersburg Channel.

Dredge volume: Not applicable.

Federal permit: U.S. Army Corps of Engineers Permit No. SPL – 2007 – 00368 – YJC.

As indicated above, the existing hydrologic conditions of Talbert Lake vary seasonally due to rainfall and vary from year-to-year depending on annual rainfall and the elevation of the underlying groundwater, which in turn varies depending on groundwater extractions. Consequently, the quality, make-up, and permanence of beneficial uses of Talbert Lake also vary.

The proposed diversion may result in a more static condition of the beneficial uses of Talbert Lake. Although this change may favor some wildlife, it will adversely affect habitat for others, primarily terrestrial species that may occupy the dry lakebed. Consequently, the proposed change in the hydrology of Talbert Lake involves trade-offs between beneficial uses. Regional Board staff observes that these trade-offs arise from the preferences of the City for a mix of various uses of the land in Central Park.

Regional Board staff notes that the City may change its preferences for recreational uses of Central Park and subsequently may discontinue the proposed diversion of flows to the constructed wetlands and Talbert Lake. As a consequence, Regional Board staff does not believe that the project-induced change in hydrology and subsequent change in habitat types should be regarded as mitigation in the traditional regulatory sense. Doing so would imply that the City has a regulatory obligation to maintain the hydrologic conditions in perpetuity. Considering that the City could potentially discontinue the diversion and allow Talbert Lake to revert to its former condition with no net adverse water quality impacts, it would be inappropriate to establish a regulatory obligation with this Certification.

The City has accepted State grant funding (Agreement Numbers 04-194-558and 06-338-558-0) for construction of this project, and, as a result, the City has a contractual obligation to continue the diversion, and to maintain and operate the project according to the terms of the Agreements. Discontinuation of the diversion at the end of the 50-year project life stipulated by the grant agreement may result in the need for subsequent environmental analysis and, if necessary, appropriate mitigation.

Regional Board staff believes that the City should manage the proposed change in hydrology in a manner that assures that the quality of the resulting beneficial uses achieves their maximum potential. The conditions below are intended to support the creation of high-quality habitats but not to mandate the creation of any specific acreage as suggested in the application for Certification.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of

State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at: www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), the City of Huntington Beach adopted a Mitigated Negative Declaration on October 1, 2008. Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered the City's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the proposed project, which avoid or mitigate impacts to water quality to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

1) The applicant must comply with the requirements of the Clean Water Act section 404 permit.
2) Discharges diverted from East Garden Grove-Wintersburg Channel must not exceed an electrical conductivity (EC) of 2,000 µmhos/cm as the result of controllable water quality factors.
3) The diversion structure must be operated in a manner that prevents the diversion of saline water to Talbert Lake to the maximum extent practicable.
4) An effective monitoring plan must be implemented to assure compliance with Condition 2 above. Regional Board staff must be notified in writing of any exceedance of the 2,000 µmhos/cm EC limit within 48 hours of discovery and be provided with a plan of corrective action.
5) Plant materials that are expected to die following inundation must be removed to the maximum extent practicable in order to prevent their decay and contribution of pollutants to Talbert Lake or the underlying groundwater, and to prevent nuisance conditions.
6) The City must implement an effective program to eradicate woody invasive plant species within and surrounding Talbert Lake and throughout the natural treatment system.
7) The City must implement an effective monitoring program for contaminated soils in areas proposed for grading in the vicinity of the abandoned oil pipeline

traversing Central Park. Regional Board staff must be notified in writing of any contamination detected within 48-hours of discovery. Any such contamination must be reported to this office. If contamination is discovered, discharges of water into Talbert Lake are prohibited until contaminated soils are remediated to the satisfaction of the Executive Officer.

8) Maintenance activities for the constructed wetlands must minimize impacts to the wetlands' beneficial uses to the maximum extent practicable.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards

and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at: www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,

for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):
U. S. Army Corps of Engineers, Los Angeles Office – Jae Chung
Department of Fish and Game – Erinn Wilson
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

APF:401/certifications/talbert lake diversion 302008-34